

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF**

Affidavit of Service Inside

74-2055

9/30

To be argued by
PAUL E. WARBURGH, JR.

United States Court of Appeals FOR THE SECOND CIRCUIT

3

DOCKET No. 74-2055

UNITED STATES OF AMERICA,

against

CARLOS MARTINEZ,

Appellee,

Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK.

BRIEF FOR THE APPELLANT, CARLOS MARTINEZ



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PRELIMINARY STATEMENT

Carlos Martinez appeals from a judgment entered in the United States District Court for the Eastern District of New York (Mishler J.) on August 2, 1974, convicting him of importing cocaine into the United States in violation of Section 952 (a) of Title 21, United States Code and possessing cocaine with intent to distribute in violation of Section 841 (a) of Title 21, United States Code.

Martinez was charged in a 23 count indictment with conspiring together with other defendants to import, possess, and distribute cocaine, and with actually importing and possessing cocaine on numerous occasions. Prior to trial Martinez moved for a dismissal of the indictment on the grounds that his rights under the Fifth Amendment had been violated.

After a two day non-jury trial and an evidentiary hearing, the District Court granted Martinez's motion for dismissal of the indictment in part by dismissing the conspiracy count. Thereafter, the District Court found Martinez guilty of seventeen counts and not guilty of the remaining ones. The District Court then sentenced Martinez to a term of imprisonment for twelve years with a special parole term of ten years and a fine of \$85,000.00. The sentence of imprisonment was consecutive with the three year

term of imprisonment imposed by Judge Morris B. Lasker in the Southern District of New York.

STATEMENT OF FACTS

In late 1971, defendant Carlos Martinez met defendant Michael Torre in the Sombrero restaurant located in Queens, New York (10). They became friends and around March 1972, Martinez moved into an apartment in a building on West 56th Street that Torre managed (11, 13). The apartment was next to the apartment in which Torre was living (13,14) and because of this they became better acquainted (14-15). Several months later in May of 1972, Torre's employer sold the building (16,18) and made available another apartment building on Madison Avenue for Torre to manage and live in. At Torre's request, Martinez in May moved into the Madison Avenue apartment that Torre was to occupy (18). Torre moved in June and permitted Martinez to share the apartment with him (19).

In September 1972, Martinez asked Torre if the apartment could be used as a receiving point for a suitcase containing cocaine (21, 22). Torre gave his permission (22) and thereafter Martinez, an individual named Hernen and an unknown third party (22) brought a suitcase to the apartment. They took the suitcase into a bedroom and pried the bottom from it with a screwdriver provided by Torre (23). A few days later Torre received \$500 or \$600 in cash from Martinez (24).

About a month later, in October, Martinez told Torre a man named Kalle was coming to the apartment with a pair of shoes containing cocaine (25). Thereafter Kalle arrived and left a pair of shoes with thick soles and heels (25-26). Torre then contacted Martinez who came to the apartment with friends.¹ He was accompanied by a number of persons (313), and they opened the heels of the shoes (27) with tools Torre gave them. The next day, Martinez gave Torre \$150 (28-29).

In November 1972, Martinez, after receiving permission from Torre again, used Torre's apartment (30). Martinez, Juan Guillermo Mesa and a person named Elga Gomez, also a defendant, brought two suitcases containing cocaine into the apartment (30). Torre gave them tools (31) and the interior of the suitcases was exposed revealing plastic containing "something white" (31). A number of other people arrived later and a party was held (318). Thereafter, Martinez and Gomez told Torre the suitcases had contained 14 "eighths"² of cocaine (32) and that Torre would receive \$100 per eighth when the cocaine was disposed of (32). A week later, Torre received \$1,300 (32). At this time, Torre was told the cocaine was coming from Colombia (32). Some time in March 1973, Martinez told Torre that a friend who had been given Torre's address

1. At that time, Martinez had moved out of the apartment and was living in Queens. During this time, Martinez and Torre would see and talk to each other regularly (27).

2. An "eighth" is the vernacular for 1/8 of a kilogram.

and telephone number was arriving in the country (34) and Martinez asked Torre if it was all right for the friend to come to his apartment (34). Torre had no objection and thereafter the friend, Saul Fontanez,³ arrived (35).

Thereafter, Martinez and Fontanez approached Torre and asked him if he would go to South America with some money to pay for a shipment of cocaine (35-36). Torre was also asked to check out a route (36). Torre decided to go and he was given \$36,000 in bearer bank checks (38) and the telephone number of Juan Mesa (40, Government Exhibit 11). He was also told the route to travel (40). In late March or early April, Torre flew to Venezuela (45-46). After some difficulty, Torre met Juan Mesa and a woman named Miriam (49), and gave them the money (49). Mesa had a suitcase containing one pound of cocaine and Torre agreed to bring it back to the United States (50).⁴ Torre then returned to the United States entering at Miami, Florida, and then flew directly to New York (55). The suitcase was then given to Martinez and Fontanez (55). Torre never saw what was in the suitcase (56). Thereafter, Torre received from Martinez \$2,500 plus the expenses of the trip (57).

Later on, Martinez and Fontanez asked Torre if he

3. Fontanez was at first introduced to Torre as Eduardo.

4. Martinez and Fontanez did not want Torre to bring any cocaine back but Torre on his own decided to do so (53).

could recruit people, preferably Americans, who would travel to South America and bring cocaine back to the United States (57-58). Torre said he would try but was unable to obtain any people immediately (59). Because of this and because there was some urgency, Torre made a second trip to Venezuela to pick up cocaine. Martinez and Fontanez told Torre that he would have a part interest in the cocaine that he was bringing back (60). Prior to leaving, the monetary arrangements were discussed and Martinez told Torre to buy some soft-sided suitcases, which he did (64-65).

On April 6, 1973, Torre flew to Venezuela together with defendant Ellen Reiner, his paramour (67). Torre, following instructions given him by Martinez and Fontanez, was unable to contact Juan Mesa (76). Torre then called Martinez in New York (77) and was assured that the mixup would be straightened out (78). Torre agreed to stay another week and tried to make contact with Mesa again (78). A couple of days later, Torre met Mesa who was accompanied by Miriam and a man named Alfonso (80). The entire shipment of cocaine wasn't ready so Torre exchanged three of the suitcases he had brought with him for three suitcases containing cocaine and agreed to wait one day for the remainder of the shipment (81). Torre received the remainder of the shipment and subsequently flew to Miami and then to New York (86,87). In Torre's Madison Avenue apartment

the suitcases were given to Martinez and Fontanez, taken apart (88,95) and plastic bags containing a white substance were removed (95). The white substance was taken by Martinez and Fontanez and the next day Torre received \$4,000 from Martinez (103). This \$4,000 together with an amount of money previously received made Torre's share \$8,500 (104).

Torre made a third trip on May 1st taking with him approximately \$50,000 in bearer bank checks.⁵ Torre met Mesa, Miriam and Alfonso and gave the money to them (112-113). Mesa in turn gave Torre a suitcase and told him that half of the cocaine in it was for Torre and Martinez and the other half was for him (113). Torre returned to the United States with a suitcase entering at Miami (120). Torre then flew to New York and gave the suitcase to Martinez and Fontanez and told Martinez how the cocaine was to be divided (123).⁶

A short time later, on May 10th, Torre again went to Venezuela (124). This time he was accompanied by Evaristo and Elba Quinones who were to receive \$5,000 for bringing the cocaine back (126,128). After their arrival in Venezuela, Torre and the Quinones met Mesa, Miriam and Alfonso. The suit-

5. The money for the bank checks was supplied by Torre, Martinez, Fontanez and other persons.

6. Torre's share of the cocaine from the second and third trips was sold for him by Martinez (122-123).

cases were exchanged for the ones containing the cocaine and Torre gave Mesa \$36,000 (134-136). Torre and the Quinones then returned to the United States on May 13th by way of Miami (138). Torre was searched thoroughly by Customs but the Quinones were not. They immediately flew to their home in Jersey City and Torre remained in Miami (140-142). At the Quinones' home, Martinez and Fontanez picked up the suitcases (143,439).

Thereafter in June 1973, Torre recruited his aunt, Raffaella Algarin to make a trip and bring cocaine back (144-147). Ellen Reiner went with her and they left on June 20th. They arrived in Venezuela the same day with suitcases to exchange for ones containing the cocaine (148,150). The exchange was made and Reiner and Algarin flew to Miami and then to New York (154-155). After their return, Torre, Martinez and Fontanez went to the Algarin home (155). The cocaine was removed from the suitcases and taken by Martinez and Fontanez (337). Algarin was paid \$2,500 (156) and Reiner was paid a few days later. Of the cocaine that was imported, Torre had an interest in one kilogram which Martinez sold to other people for him (338).⁷

In early July, Torre again made a trip (157). The purpose of this trip was to ascertain why the cocaine that they

7. At this point, the conspiracy was growing as more people were involved and the area of distribution increased (339-340).

had been receiving was of poor quality (158) and to attempt to make arrangements to purchase cocaine directly from the laboratory (159). Torre brought with him about \$48,000 to \$50,000 (159) and a letter from Fontanez to Vario Villa (160). Torre met Mesa in Cucuto, Colombia (162) and then drove to Bogota (163) where they met Miriam. Torre gave the money (164) to her and they went to Medellin where Torre delivered the letter from Fontanez (167). Thereafter, Torre returned to the United States with a suitcase containing cocaine that had been given to him by Mesa (162-163; 168). This cocaine was Torre's and Mesa's and Torre gave it to Abdulio Rodriguez to sell for him (169). Rodriguez sold it to a number of people (344).

While Torre was in South America, on July 13, 1973, Martinez and an individual named Hector Ordonez⁸ sold two "eights" of cocaine to Special Agent Michael Levine⁹ who was

8. Martinez met Ordonez in April of 1973 in a Queens bar and they began to share an apartment. Thereafter, Ordonez began to drive Martinez to cocaine transactions receiving a share of the proceeds (H.T. 71-71, 82). At times when meetings were held, Ordonez would present and participate (H.T. 70-71).

9. Special Agent Levine at the time was assigned to Group 33 which is the same group that developed the instant case. The group supervisor was William McMullan. He was the supervisor during the period July 1973 through to the present. The case was discussed with the case agent Schnackenberg (40-41) and decisions were subject to the approval of McMullan. In July 1973 and prior thereto, there was an investigation going on involving

working in an undercover capacity (H.T. 67). The sale had been arranged by Abdulio Rodriguez who was working for the government as a confidential informant (H.T. 68). The evening before the sale, Martinez and Ordonez (H.T. 72) picked up two "eighths" from the basement (H.T. 69) of Torre's apartment building where it was being stored and took it to the apartment in the Bronx where they both lived (H.T. 69). The cocaine was part of the shipment that Reiner and Algarin had brought into the country in June (H.T. 68).

In August, another shipment of cocaine was ready and Torre obtained the services of Gloria Rodas (172-173) and Iris Maldonado as couriers (174). On August 1, 1973, Maldonado, Rodas and Rodas' son, Richardo, flew to Venezuela (178). They received the suitcases containing the cocaine from Mesa, Miriam and Alfonso and returned to the United States (180). Torre and a friend of his were present in Venezuela on a business and pleasure trip at the same time. On their return to the United States, Torre went to Rodas' home with Martinez and Fontanez and picked up the cocaine (184-185). The cocaine was then taken to a garage in Queens where it was weighed and packaged in "eighths" (186-187). Most of the cocaine that Torre had an

9. (Continued) Torre (H.T. 17). The source of the information was Rodriguez and it was known Torre and Martinez were involved together (H.T. 17-19).

interest in was given to Martinez to sell for him (188) and the remaining was sold to Jaime Palma (188).

In the middle of August at Mesa's request, Torre, Rodas and Maldonado went to Canada by car and picked up suitcases containing cocaine and brought it into the United States. Fontanez and Mesa accompanied them part of the time in their own car. Martinez had no interest in this shipment of cocaine (194,213).

In the early part of September 1973, Torre discussed with Martinez and Fontanez picking up another shipment of cocaine that was ready (213). Three people were needed because a large amount of cocaine was available (214). Torre obtained Mary Faherty and Algarin and they left on September 20, 1973 for Venezuela. They returned with the cocaine on September 23. Torre, Fontanez and Mesa picked up the cocaine and took it to the Queens garage for packaging (225). Torre sold some of the cocaine to Jaime Palma (225).

On September 17, 1973, Martinez was arrested by Group 33 special agents and a quantity of cocaine was seized. He was incarcerated in lieu of \$100,000 bail. He was indicted together with Ordonez in the United States District Court for the Southern District of New York and charged with conspiring with Ordonez and others to possess and distribute cocaine, with

participating with Ordonez in distributing cocaine on July 13th and with joint possession with Ordonez of cocaine on September 17th. Trial was scheduled for December 27, 1973.

Another shipment was ready and in October, 1973, Torre and Fontanez discussed another trip to pick it up (228). Fontanez indicated that Martinez had an interest in this shipment (229). The shipment was to be prepaid with Torre and others contributing the money (232). Torre was no longer personally transporting the money (232). Rodas and Maldonado were asked to make the trip which they did (233). They returned via Miami and gave the suitcases to Torre, Fontanez and Mesa (237). At the warehouse the cocaine was packaged and Torre took his share and gave it to Rodriguez and Palma to be sold (238).

In November 1973, Torre recruited Mary Faherty to make another trip. Arrangements were made and Mary Faherty, her husband and son went to Venezuela on November 8th (243). They picked up the cocaine and returned on November 10, 1973. They were searched by Customs and the cocaine was discovered. Thereafter, Faherty agreed to cooperate and with her help Torre, Fontanez and some others were arrested the next day.

Thereafter, Torre agreed to cooperate and on November 11, 1973, gave a statement. He gave another statement

on December 12, 1973, and then on January 8, 1974 testified to the grand jury. His testimony provided the basis for the indictment.

On December 26, 1973, Martinez pleaded guilty to count two of the Southern District indictment as a result of an agreement with the government. The agreement that was reached by Assistant United States Attorney Daniel Pickett and Paul E. Warburgh, Jr., defense counsel, was that Martinez would plead guilty to one count of the indictment and the other two would be dismissed at the time of sentence. Count two was chosen as the one on which the guilty plea would be entered because the factual basis would be the easiest to state. On February 1, 1974, Martinez was sentenced to imprisonment for three years and counts one and three were dismissed. On January 30, 1974, Martinez was arraigned on the instant indictment which had been filed on January 15, 1974.

ARGUMENT

THE DISTRICT COURT ERRED IN NOT
DISMISSING THE INDICTMENT BECAUSE
THE GOVERNMENT VIOLATED THE DOUBLE
JEOPARDY CLAUSE AND THE DUE PROCESS
CLAUSE OF THE FIFTH AMENDMENT TO
THE UNITED STATES CONSTITUTION

(I)

The Fifth Amendment to the United States Constitution guarantees that a person shall not be twice placed in jeopardy for the same offense. The same Amendment guarantees to each person that there shall not be taken from him life, liberty or property without due process of law.

The unique facts of the instant case give this Court an opportunity to review its prior decisions on double jeopardy and to integrate the modern theory of double jeopardy with the latest concepts of plea bargaining as expressed in Santobello v. New York, 404 U.S. 257 (1971).

It has long been the policy of the federal government "that several offenses arising out of a single transaction should be alleged and tried together and should not be made the basis of multiple prosecutions, a policy dictated by considerations both of fairness to defendants and of efficient and orderly law enforcement." Petite v. United States, 361 U.S. 529, 530-531 (1960).

It is submitted that "fairness to defendants" requires

that the above-quoted governmental policy should be considered a constitutional requirement, and that a violation thereof should be considered a violation of the Fifth Amendment prohibition against double jeopardy and the right to due process of law.

For many years, the courts followed the holding of Morey v. Commonwealth, 108 Mass. 433, 434 (1871), that double jeopardy only attached if the evidence required to convict on one indictment would have been sufficient to warrant conviction on another indictment.

But this rule has been eroded in recent years. The more modern and realistic view, as expressed by Justice Brennan of the United States Supreme Court, albeit in a concurring opinion, is that successive federal prosecutions of the same person based on the same acts are prohibited by the Fifth Amendment even though brought under federal statutes requiring different evidence and protecting different federal interests.

Justice Brennan stated clearly the reason why our Founding Fathers included the prohibition against double jeopardy in the Bill of Rights:

"The basis of the Fifth Amendment protection against double jeopardy is that a person shall not be harassed by successive trials; that an accused shall not have to marshal the resources and

energies necessary for his defense more than once for the same alleged criminal acts." Abbate v. United States, 359 U.S. 187, 198-199 (J. Brennan, separate opinion) (1959); See also: United States v. Cioffi, 487 F.2d 492 (CA2 1973).

At the time that the defendant Martinez pleaded guilty to a narcotics violation in the Southern District of New York, the federal government knew that a new indictment, alleging the same type of crime, was forthcoming in the Eastern District of New York. The same federal law enforcement officials who were in charge of the Southern District case also investigated and processed the Eastern District charges.

There was no reason for the government to force Martinez to face a succession of trials seriatim. A superceding indictment could have been filed combining all narcotics offenses against the defendant. This would have complied with the stated governmental policy of alleging all offenses against the defendant in one indictment, so that the government would have but one opportunity to prosecute on that series of transactions, as the Fifth Amendment requires.

Although the substantive acts alleged in the Eastern District indictment were different from those alleged in the Southern District indictment, it is submitted that, in reality,

and as a matter of justice, the acts should be considered as one continuing transaction. Otherwise, the situation would arise where the federal government could keep indicting Martinez for each of his narcotics transactions until the government was satisfied that the defendant had been convicted of the "right" count, and received the "right" sentence. Such action by the federal government is inherently unfair to the defendant.

The fact situation of the cases in both the Southern and Eastern Districts is that the defendant Martinez conspired to, and did in fact, import cocaine into the United States and possessed and distributed it in both districts in the City of New York. This one fact situation was divided, arbitrarily, into two different ones by the government. To carry this unfair division to its rather illogical ends, the government could have subdivided each indictment into several other indictments, and could have shuttled the defendant between the Southern and Eastern Districts, piling trial upon trial, and sentence upon sentence, until the government was finally satisfied.

The Fifth Amendment to the United States Constitution was not designed to "satisfy" the government. It was designed to protect the individual from the abuse of governmental power which occurred in this case. Carlos Martinez is entitled to the pro-

tections afforded by the Bill of Rights.

Since the indictments in the Southern and Eastern Districts related to one fact situation, the holdings of this Court require that the Eastern District conviction be reversed and the indictment dismissed.

"The Fifth Amendment guarantees that when the government has proceeded to Judgment on a certain fact situation, there can be no further prosecution of the fact situation alone. The defendant may not later be tried again on that same fact situation, where no significant additional fact need be proved, even though he be charged under a different statute. He may not again be compelled to endure the the ordeal of criminal prosecution and the stigma of conviction. These are the plain and well understood commands of the Fifth Amendment in forbidding double jeopardy. Here there was one sale of narcotics. The government should have but one opportunity to prosecute on that transaction. Although in such a prosecution it may join other charges based on the same fact situation, it may not have a succession of trials *seriatim*." United States v. Sabella, 272 F.2d 206, 212 (CA2 1959).

Further, the failure of the federal government to inform the defendant and his attorney, at the time of the plea in the Southern District, that another indictment was forthcoming for the same crimes in the Eastern District, constituted a violation

of the defendant's guarantee of due process of law.

Had the government alerted the defendant about the forthcoming indictment, he might have been able to negotiate a plea in the Southern District to include the Eastern District charges, or else to obtain a promise from the government that he would nowhere else be prosecuted for his cocaine dealings. Such plea bargaining is, of course, allowed and even approved by the United States Supreme Court. Santobello v. New York, 404 U.S. 257 (1971).

In United States v. Carter, 454 F.2d 426 (CA4 1972), it was held that a United States Attorney in one district must abide by a promise of a United States Attorney in another district, where the defendant was convicted of forgery, that the defendant would nowhere else be prosecuted for a series of forgeries.

The government here denied the defendant due process of law because it did not allow him to utilize to his advantage the holdings of Santobello and Carter. The government did not, as it should have, inform him of narcotics charges arising out of the same general fact situation. Without the defendant or his lawyer knowledgeable about the charges, they had no possible means of weighing the advantages and disadvantages of pleading guilty or going to trial. The defendant was "in the dark" at the time of his plea in the Southern

District. Santobello frowns on this type of plea negotiation. It is only when all the facts are fully known can a defendant plea guilty in accordance with due process of law.

(2)

The indictment in this case must be dismissed for another reason. As was mentioned before the United States Supreme Court in Santobello v. New York, 404 U.S. 257 (1971), expressly approved of plea-bargaining in criminal cases. The court noted that if there are promises by the prosecution which are part of the bargain such promises must be fulfilled. In other words the defendant if he fully performs his part is entitled to the benefit of his bargain. If the prosecution does not keep its promise the defendant is entitled to specific performance of the agreement or a withdrawal of his plea of guilty. See: Santobello v. New York, supra, 263; Bryan v. United States, 481 F. 2d 272, 274 (CA 5 1973); United States v. Ewing, 480 F. 2d 1141, 1143 (CA 5 1973); United States v. Hallam, 472 F. 2d 169 (CA 9 1973); United States v. Carter, 454 F. 2d 426 (CA 4 1972); United States v. Paiva, 294 F. Supp. 742 (D.C. 1969). All of these cases hold that where a promise is made by the prosecution as part of a plea-bargain and the promise is subsequently broken one of the remedies that the defendant is entitled to is specific performance of the prosecution's

promise or dismissal of the indictment.

In Bryan v. United States, supra, the defendant asserted that the prosecution had broken its promise made as part of a plea-bargain. The court held that the defendant was entitled to a hearing on his contentions and that if he prevailed he would be entitled to specific performance of the agreement or the opportunity to withdraw his plea of guilty. Likewise, in United States v. Ewing, supra, the court held that the defendant was entitled to have the government perform its promise made as part of a plea-bargaining agreement.

Moreover in United States v. Hallam, supra, the court stated that "due respect for the integrity of plea-bargains demands that once a defendant has carried out his part of the bargain the government must fullfill its part." In that case the District Court over the objection of the defendant withdrew the defendant's plea of guilty and permitted the government to reindict the defendant on a count of the indictment that had previously been dismissed as part of the bargain. The Court of Appeals relying on Santobello v. New York, supra, reversed the District Court and remanded the case with instructions that the new indictment be dismissed.

In the instant case the defendant and the government reached an agreement with respect to the indictment in the Southern District that the defendant would plead guilty to distributing cocaine and that at the time of sentence the remaining two counts

were dismissed. This manner of negotiating a plea-bargaining agreement is well known in both the Southern and Eastern Districts. It is impliedly understood by both defense counsel and assistant United States attorneys that if the defendant keeps his part of the bargain by pleading guilty and serving his sentence the dismissed counts will never be reinstated or will their subject matter be the basis of another indictment. In this case with reference to the Southern District indictment the Government could not have reindicted the defendant on the same facts that were the basis for the counts that were dismissed as part of the agreement. It follows from this that the United States Attorney in the Eastern District cannot indict the defendant for the same crime that had been dismissed in the Southern District as the result of plea-bargaining. See: United States v. Carter, supra, at 428.

The government cannot contend that they were unaware of the fact that both the Southern District case and the Eastern District case was the same. As early as July 1973 agents of Group 33 were aware that there was a nefarious relationship between Torre and Martinez. Torre's cocaine smuggling activities had been known even before that time and thereafter the government probably received continuous information concerning Torre and Martinez from Abdulio Rodriquez. On December 12, 1973, there could no longer

have been any doubt because on that day Torre gave a full statement concerning all details of the business since its inception. He detailed the entire operation of how the cocaine was obtained, imported, and distributed.

It would border on the ridiculous to say that the government did not know that both cases were identical. Group 33 was involved in both cases; the Group Supervisor was the same and all matters were discussed with him. On these facts the government must be held to have known.

CONCLUSION

The judgment of conviction should be reversed and the indictment dismissed.

Respectfully submitted,

Paul E. Warburgh, Jr.
Attorney for Appellant

AFFIDAVIT OF SERVICE BY MAIL

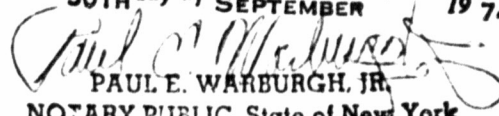
STATE OF NEW YORK }
COUNTY OF NEW YORK } SS:

FLORISTEANE ANTHONY
being duly sworn, deposes and says; that deponent
is not a party to the action, is over 18 years of age
and resides at 122 EAST 42ND STREET
That on the 30TH day of SEPTEMBER 19 74
deponent served the within BRIEF AND APPENDIX
upon DAVID G. TRAGER
UNITED STATES ATTORNEY
attorney(s) for APPELLEE

in this action, at UNITED STATES COURTHOUSE
225 CADMAN PLAZA EAST
BROOKLYN, NEW YORK 11201
the address designated by said attorney(s) for that
purpose by depositing a true copy of same enclosed
in a postpaid properly addressed wrapper, in - a
post office - official depository under the ex-
clusive care and custody of the United States post
office department within New York State.

Sworn to before me,

this 30TH day of SEPTEMBER 19 74


PAUL E. WARBURGH, JR.
NOTARY PUBLIC, State of New York
No. 52 - 9528430
Qualified in Suffolk County
Commission Expires March 30, 19 76